

The Orissa



G a z e t t e

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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th September 2007

No. 10431—1i/1-(BH)-11/98-(pt.)/L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 23rd June, 2007 in I.D.Case No.138/98 of the Presiding Officer, Labour Court, Bhubaneswar to whom the Industrial dispute between the Management of Dhamara Fishing Harbour, Dhamara and its workman Sri Bansidhar Sahoo was referred for adjudication is hereby published as in the schedule below.

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 138 of 1998

Dated the 23rd June 2007

Present :

Shri S. K. Mohapatra, (OSJS), (Jr. Br.)
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of Dhamara
Fishing Harbour

.. First-party—Management

And

Their workman ,
Shri Bansidhar Sahoo,

.. Second-party—Workman

Appearances :

Shri P.N.Majhi

.. For First-party—Management

Shri B.D.Sahoo

.. For Second-party—Workman himself

AWARD

The Government of Orissa in the Labour & Employment Department referred the present dispute between the management of Dhamara Fishing Harbour and their workman Sri Banshidhar Sahoo under Notification No.5323/L.E. dated 18th May 1998 vide Memo. No.11350 (6)/L.E. dated 15th October, 1998 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

"Whether the action of the management of Assistant Conservator, Dhamara Fishing Harbour, Dhamara in terminating the services of Sri Bansidhar Sahoo, Mate with effect from 16th June 1995 is legal or justified ? If not, what relief he is entitled to ?"

3. The case of the workman in brief is as follows :

The workman was appointed as Mate (Supervisor) in the month of March, 1988 under the management of Dhamara Fishing Harbour and was assigned his duty as such at Chudamani Fishing Harbour. Both the Dhamara Fishing Harbour and Chudamani Fishing Harbour are under the administrative control of the Chief Construction Engineer of Gopalpur Port Project, At/P.O.-Arjyapalli, Chhartrapur in the district of Ganjam. The Assistant Conservator of Dhamara Fishing Harbour is in-charge of both the Fishing Harbour and he used to allot duty and disburse the salary vide his letter No.1 dated the 18th June 1992 the Assistant Conservator of Dhamara Fishing Harbour entrusted the workman the additional duty of watching the auction packing hillside and store etc. at Chudamani. The workman worked continuously for a period of over six years between 1988 to October, 1994 at Chudamani Fishing Harbour and therefore he was transferred from Chudamani to Dhamara Fishing Harbour in November, 1994 where he worked from November 1994 onwards. The workman was being paid the salary on a monthly basis. On 16th June 1995 while the workman was supervising stone packing work at Dhamara Fishing Harbour he met with an accident resulting in serious injury in his left leg. The workman was under treatment of Medical Officer of Basudevpur C.H.C. from 16th June 1995 to 17th December 1995 and had been advised complete rest. The workman had duly informed his authority i.e. Assistant Conservator of Dhamara Fishing Harbour about his accident during the course of his duty at Dhamara and he was advised to remain on treatment and to resume duty after full recovery. After his recovery from the said injury the workman approached the Assistant Conservator of Dhamara Fishing Harbour in the first week of January, 2006 seeking to allow him to resume his duty but he was advised by the Assistant Conservator to take further rest for few days. The workman approached the Assistant Conservator several times but he was not allowed to resume his duty. The refusal of Assistant Conservator of Dhamara Fishing Harbour to allow the workman to resume his duty tantamounts to termination of his service.

The workman raised an industrial dispute before the Assistant Labour Officer-cum-Conciliation Officer, Bhadrak who fixed a date for conciliation and invited the Assistant Conservator for conciliation but the Assistant Conservator himself did not attend the conciliation proceeding and deputed his subordinate staff who was not competent to effect a conciliation in the absence of any instruction from the Chief Construction Engineer, Gopalpur and therefore the Conciliation Officer after repeated attempts for conciliation submitted a failure report to the Government who in exercise of the powers under sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 referred the present case to this Court for adjudication and hence this case.

4. The management in its written statement has contended that the present proceeding before this Court is not maintainable either on facts or according to law and that the workman of this case is not a workman within the meaning of Section 2 (s) of the Industrial Disputes Act,

1947 (hereinafter referred to as the I.D.Act). The management concerned is a Government Office where there is no profit motive and as such it can not come under the purview of the I.D.Act. Further contention of the management is that the workman in question was a daily wage earner appointed under daily wage basis and therefore, his disengagement from service can not be construed as retrenchment under the provisions of the I.D.Act. Further averments of the management in the written statement is that the workman had never been appointed as Mate (Supervisor) and he has not been assigned any duty at Chudamani fishing Harbour in the capacity as a Supervisor. On the other hand, the S.D.O. In-charge of the Fishing Harbour was engaging daily labourers as and when required and the present workman was one of them. The workman had been engaged on daily wage basis at Dhamara Fishing Harbour and he had never been engaged as Mate or Watchman at any time. The workman was not being paid any monthly salary but he was being paid his wages for the period of his work twice or thrice in a month for the convenience of the office. The management has denied any injury to the workman on 16th June 1995 at the work site and has contended that whereabouts of the workman was not known to the office of the management since 16th June 1995. The workman has never worked continuously under the management. Further averment of the management in its written statement is that the workman had never requested the Assistant Conservator of Dhamara Fishing Harbour in the month of January, 1996 to resume his duty. On these averments the management has contended that the workman is not entitled to any relief whatsoever.

5. On the basis of the above pleadings of the parties, the following issues have been framed for determination.

ISSUES

- (i) "Whether the action of the management of Assistant Conservator, Dhamara Fishing Harbour, Dhamara in terminating the services of Sri Bansidhar Sahoo, Mate with effect from 16th June 1995 is legal or justified ?
- (ii) If not, what relief he is entitled to ? "

6. Before coming to a conclusion on issue No. (i), three important questions need to be answered firstly whether the management concerned is an industry within the meaning of Section 2 (j) of the I.D.Act, secondly whether Sri Bansidhar Sahoo is a workman within the meaning of Section 2 (s) of the I.D. Act and thirdly whether the workman was in continuous service within the meaning of Section 25-B of the I.D.Act.

7. In the written statement the management has taken a stand that the management being a Government office and there being no profit motive it is not covered under the provisions of the I.D.Act. In this context the witness for the management M.W.1 has not whispered a single word as to why the management concerned i.e. Dhamara Fishing Harbour and Chudamani Fishing Harbour are not industries as defined under Section 2 (j) of the I.D.Act. On the contrary, in his cross-examination M.W.1 has categorically stated that the management collect landing charges from all Travlers for use of the facility for the fishing port at Dhamara. Further evidence of M.W. 1 is that they had engaged the workman as a D.L.R. from March, 1988 to 15th June 1995 on a monthly wage basis and he has proved Exts.A to A/11 as hand receipts showing payment of wages to the workman. This shows that the port authorities of Dhamara Fishing Harbour who are also controlling authorities of Chudamani Fishing Harbour had engaged the workman on daily rate basis and they were paying wages to the workmen for the days he had worked in a particular month. This shows that the management was the employer and the workman was the employee.

Thus it is very clear that the management was carrying on systematic activity by co-operation between itself as an employer and his workmen as employees for giving services to fishing trawlers i.e. for the satisfaction of human wants and therefore, the management concern is definitely an 'industry' within the meaning of Section 2 (j) of the I.D.Act. In this context the decision of the Hon'ble Apex Court in the case of Bangalore Water Supply and Swerage Board vrs. A.Rajappa reported in AIR 1978, SUPREME COURT 548 can be relied on.

8. On the Second question as to whether the second-party namely Sri Bimbadhar Sahoo was a workman or not is to be seen from the evidence of second-party who has examined himself as W.W.1 that he had been working as N.M.R. under the management of Dhamara Fishing Harbour between the period from 1988 to 1995 and was getting wages every month except for Sundays. Thus the evidence of W.W.1 that he was a N.M.R./D.L.R. under the management has been admitted by M.W.1. From such evidence it is very clear that the second-party had to do manual work being employed by in the organisation of the management which is an industry and therefore, the second-party is a workman within the meaning of Section 2 (s) of the I.D.Act.

9. Thirdly the question arise as to whether the workman was in continuous service within the meaning of Section 25-B of the I.D.Act. as claimed by him. In this context the Hon'ble Apex Court in the decision of Range Forest Officer vrs. S.T.Hadimani reported in 2002 (T) IJ. 1053 have categorically held that ones lies squarely on the workman to show that he was in continuous service within the meaning of Section 25-B of the I.D.Act. In his evidence M.W.1 has claimed that he had worked under the management as N.M.R. from 1988 to 1995 and had been paid wages except for the Sundays and he has relied mainly on Exts.1 and 2 series to substantiate his claim. Ext.1 in the xerox copy of the medical certificate which does not disclose that the workman had met any accident at his work place or that he was being treated as a workman of Chudamani Fishing Harbour. Ext.2 series are some absentee statement. The workman has not explained as to who had prepared Exts.2 series on as to from where he has got the documents in question. Although one of the employees of the management has examined as M.W.1 Exts.2 series had not been confronted to him and therefore, the authenticity of Exts.2 series has not been proved to the satisfaction of the Court. On the other hand, after the end of each week the workman was having a break in service on each Sundays. Therefore the work of the workman does not come within the category of continuous service as defined under Section 25-B (1) of the I.D.Act. The provisions under Section 25-B (1) of the I.D.Act. reads as follows :

"25-B (1)—A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman."

It is clear that the provision under Section 25-B (1) of the I.D.Act. speaks of uninterrupted service which also included absence on account of sickness or authorised leave or an accident to the workman or absence due to strike which was not illegal and also includes absence due to lock-out or cessation of work which was not due to any fault on the part of the workman. As already discussed the workman has failed to prove that he had met with an accident during his service at the work place and was sick on that account. Ext.1 does not prove any such thing. Thus as N.M.R. the workman was not in uninterrupted service as defined under Section 25-B (1) of the I.D.Act.

10. Now the question arises as to whether the workman was in continuous service within the meaning of Section 25-B (2) (a) of the I.D.Act. which reads as follows :

“25-B (2) (a)— For a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

- (i) One hundred and ninety days in case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case.

In his evidence W.W.1 has not specifically stated that he had worked for 240 days for the period 12 months proceeding the date of his termination i.e. since 16th June 1995. Ext.3 series are hand receipts showing payments in various months to the workman for the number of days he had worked. On a close scrutiny of the documents Ext.3 series it is seen that during the relevant period the evidence is available about the workman working 188 days only in between June, 1994 to June, 1995. As already indicated that burden of proof lies on the workman himself and can not be shifted to the management. The workman in the instant case either through the documents Ext.2 series or through the documents Ext.3 series has signally failed to show that he had worked for 240 days in the period of 12 months preceding to the date of his termination. Therefore it can not be said that the workman was in continuous service within the meaning of Section 25-B of the I.D.Act.

11. Now that the workman has failed to prove that he was in continuous service within the meaning of Section 25-B of the I.D.Act. and consequently to the effect is that the workman is not entitled to the compliance of the provision under Section 25-F of the I.D.Act by the management before his termination from his service and therefore the termination of the service of the workman with effect from 16th June 1995 can not be said either illegal or unjustified.

12. In view of my answer to issue No. (i) the workman is not entitled to any relief whatsoever and therefore, the issue No. (ii) is answered accordingly.

Hence the reference is answered as follows :

The action of the management of Assistant Conservator, Dhamara Fishing Harbour, Dhamara in terminating the services of Sri Bansidhar Sahoo, Mate with effect from 16th June 1995 is legal and justified and therefore, the said workman namely Bansidhar Sahoo is not entitled to any relief under any provisions of the I.D.Act.

Dictated and corrected by me.

S.K.MOHAPATRA
23-6-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K.MOHAPATRA
23-6-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor
N.C.RAY
Under-Secretary to Government